

Appl. No. 10/753,974
Amdt. dated February 27, 2008
Reply to Office Action of November 29, 2007

REMARKS/ARGUMENTS

Claims 1-20 and 22 are presented for the Examiner's consideration.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Independent claims 2 and 3 were amended to recite that the top surface of the cover layer has a mixture of hydrophobic and hydrophilic microfibers at the top surface. Support for this claim language is easily found at page 4, lines 9-10 and lines 20-21. No new matter is introduced by the foregoing amendments to independent claims 2 and 3.

Before addressing the new grounds of rejection made by the Examiner, Applicants are perplexed why the Examiner is now making a ground of rejection based on a reference that was cited by the Applicants in an IDS received by the USPTO on May 23, 2005. The first Office Action was mailed on June 20, 2006 and included an acknowledgment by the Examiner that the Becker et al. reference was considered by the Examiner. At that time, the Examiner appeared to be of the opinion that the Becker et al. reference was not relevant to reject the pending claims. It was only after Applicants filed an Appeal Brief, which essentially presented identical arguments to those made in the Amendment filed February 14, 2007, did the Examiner abandoned her previous rejection to now reject the claims over a reference that has been of record throughout the prosecution of this application. Why was the rejection based on Becker et al. not made sooner? Why was the rejection not made in response to the Amendment file February 14, 2007? A new rejection of the claims, based on a reference that has been of record during the entire prosecution period, seems to be very untimely at this stage of the prosecution. In any event, Applicants will address the new grounds of rejection at this time.

Claims 1-10 and 14-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103 (a) as obvious over Becker et al., U.S. Patent 4,657,538. This rejection is respectfully traversed.

To address this rejection, Applicants point out that each of the independent claims (claims 1-3) require that the cover layer has a top surface and **the top surface has a quantity of hydrophilic microfibers and a quantity of hydrophobic microfibers**. Claim 1 already contained this limitation and claims 2 and 3 are amended above to include this limitation. In addition, each of the independent claims requires that the quantity of hydrophobic microfibers

Appl. No. 10/753,974
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located at the top surface is larger than the quantity of the hydrophobic microfiber. Stated another way, both hydrophilic and hydrophobic fibers **must be present at the top surface of cover layer and there must be a larger quantity of hydrophobic fibers than hydrophilic fibers at the top surface.**

The Examiner addresses this set of limitations by stating that Becker et al. teaches a cover layer prepared from a mixture of hydrophilic microfibers (wood pulp fibers) and hydrophobic microfibers (polyester/polyethylene conjugate fibers). Applicants agree with this statement as set forth above.

The Examiner then states that a quantity of hydrophobic fibers and hydrophilic fibers are present on the top surface of the cover and that the quantity of hydrophobic microfibers is greater than the quantity of hydrophilic microfibers. **Applicants completely disagree with this statement.** To support this statement, the Examiner cites Example 1. A careful review of Becker et al., and in particular Example 1 of Becker et al., reveals that Becker does teach having both hydrophilic and hydrophobic fibers at the top surface of the cover. Actually, Becker et al. states that the cover layer has only hydrophobic fibers at the top surface. Becker clearly states in Example 1 that the cover layer is prepared from a mixture of the wood pulp fibers and conjugate fibers **sandwiched between two veneers of conjugate fibers.** Specifically, Example 1 of Becker states:

"The body facing side of the liner is provided with an outer cover constructed of a thermal bonded absorbent fabric comprising, overall, 24% by weight of wood pulp fibers and 76% by weight of conjugate fibers having a polyester core and a high density polyethylene sheath. The conjugate fibers have a staple length of 3.81 cms. and a denier of 3.0. **The materials are so distributed as to provide a pulp/conjugate fiber mixture sandwiched between two veneers of conjugate fibers, the veneers having basis weights of 0.32 oz./yd². and 0.37 oz./yd²., the heavier veneer ultimately being employed on the body facing side of the product.** The fabric is stabilized by passing hot air through the fibers and thereby melting the high density polyethylene which bonds the fibers together upon cooling. The overall fabric has a basis weight of 1.55 oz./yd²." (*emphasis added*).

As a result, the Applicants claim limitation clearly requiring that the top surface of the cover layer have both hydrophobic and hydrophilic fibers is clearly not taught by Becker et al. Becker et al. teaches that the outer surfaces of the cover layer are made only from conjugate fibers.

Appl. No. 10/753,974
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In addition, Becker et al. states in first paragraph of column 3, that the fabric, meaning the outer cover, has outer layers made from conjugate fibers with wood pulp and conjugate fibers sandwiched in between the outer layers. Therefore, the teachings of Becker et al. clearly directs one skilled in art not to have hydrophilic fibers on the surface of the cover layer, which is contrary to the Applicants claims. As a result, none of the independent claims 1-3 are anticipated by Becker et al.

Regarding the Examiner's inherency rejection, Applicants point out that the absorbent liner claimed is different from the absorbent liner taught by Becker et al., i.e. not substantially identical, as is stated above. Therefore, it is unnecessary for the Applicants to address the inherency arguments made by the Examiner.

Applicants will also point out that the claimed invention is not obvious under 35 U.S.C. § 103, since Becker et al. teaches away from having both hydrophilic and hydrophobic microfibers at the top surface of the cover. In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Given that Becker et al. does not teach or suggest having both hydrophilic and hydrophobic microfibers at the top surface of the cover layer and actually teach having only hydrophobic microfibers on the top surface of the cover layer.

Regarding the dependent claims 4-10 and 14-17, these claims depend directly or indirectly from the independent claims 1, 2 and/or 3, and thus include all of the limitations of claims 1, 2 or 3. Claims 4-10 and 14-17 are also not anticipated or rendered obvious by Becker et al. for the same reasons claims 1, 2 and/or 3 are not anticipated or rendered obvious, as is stated above.

Therefore, claims 1-10 and 14-17 are not anticipated under 35 U.S.C. § 102(b) or rendered obvious under 35 U.S.C. § 103 (a) by Becker et al. This rejection should be withdrawn.

Claims 11-13 and 22 were rejected under 35 U.S.C. § 103 as being obvious over Becker et al. This rejection is respectfully traversed.

Appl. No. 10/753,974
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Claims 11-13 further define properties of the absorbent liner, in particular the density. Claims 11-13 depend on independent claims 1, 2 and 3, thus include all of the limitations of claims 1, 2 or 3. As is stated above, Becker et al. teaches away from having both hydrophilic and hydrophobic microfibers at the top surface of the cover. Therefore, claims 11-13 are also not rendered obvious over the teachings of Becker et al. for this same reason.

Regarding claim 22, this claim requires that the hydrophilic microfibers make up greater than 65% and up to 80% of the total weight of the mixture of microfibers in the cover layer. The remainder of the microfibers in the cover layer is the hydrophobic microfibers. Becker et al. only teaches that the cover layer has a mixture of 24% by weight hydrophilic microfibers and 76% by weight hydrophobic microfibers. No other weight ratio of the microfibers is given. Typically, as is well known in the art of sanitary napkins and pantliners, sanitary napkins and pantliners have generally hydrophobic cover layers or body side liners to prevent rewet of cover by fluid stored in the absorbent core on the cover layer. If the cover layer is rewetted by the fluid stored in the absorbent core, the user of the sanitary napkin or pantliner begins to feel wet, which is undesirable. This is one of the reasons that Becker et al. forms a laminate and the top surface is prepared from only hydrophobic fibers, although this reason is not stated in Becker et al. Therefore, one skilled in the art would not be motivated the percentage of hydrophilic fibers in the cover layer as suggested by the Examiner.

In the statement of the rejection, the Examiner states that the claimed weight percentages apply everywhere in the cover layer except the top surface. Actually this statement is not true. The cover has an overall percentage of microfibers as claimed in claim 22. The top surface of the cover has a larger quantity of hydrophobic microfibers than a quantity of hydrophilic microfibers located at the top surface. As a result, away from the top surface, the actual percentage of hydrophilic microfibers would necessarily have to be greater than the percentage which is claimed. It appears that the Examiner's statement of the rejection shows that the Examiner may have misinterpreted the limitations of claim 22.

In addition, claim 22 depends on independent claims 1, 2 and 3, thus include all of the limitations of claims 1, 2 or 3. As is stated above, Becker et al. teaches away from having both hydrophilic and hydrophobic microfibers at the top surface of the cover. Therefore, claim 22 is also not rendered obvious over the teachings of Becker et al. for this additional reason.

To summarize, Becker et al. does not teach or suggest all of the limitations of the present claims and actually teaches away from the limitation of independent claims 1-3. In addition, the

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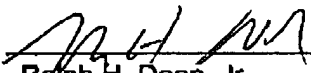
limitations of claim 22 are not taught, suggested or rendered obvious by Becker et al. As a result, the limitations of independent claims 1-3 and 22 are not anticipated or rendered obvious by Becker et al. for the reasons stated above. Claims 4-20 depend from claims 1, 2 and/or 3 and thus include all of the limitations of the independent claims. As a result, claims 4-20 are not anticipated or rendered obvious for the same reasons claims 1, 2 and/or 3 are not anticipated or rendered obvious. Therefore, the rejections based on Becker et al. are untenable and should be withdrawn.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (770) 587-8621.

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I, Pauline Turner, hereby certify that on February 27, 2008 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

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